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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES MURPHY,

Defendant and Appellant.

F077459

(Super. Ct. No. VCF358112)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. H.N. Papadakis, Judge. (Retired Judge of the Fresno Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Peña, J. and Smith, J.

Appellant Charles Murphy pled no contest to first degree burglary (Pen. Code, § 459/count 1)¹ and misdemeanor receiving stolen property (§ 496, subd. (a)/count 2). He also admitted a serious felony enhancement (§ 667, subd. (a)(1)), two prior prison term enhancements (§ 667.5, subd (b)), and allegations that he had a prior conviction within the meaning of the “Three Strikes” law (§ 667, subds. (b)-(i)).

On appeal, Murphy contends this matter should be remanded for the trial court to exercise its discretion to consider whether to strike Murphy’s serious felony conviction. We find merit to this contention and remand the matter for further proceedings. In all other respects, we affirm.

FACTS

On October 31, 2017, Murphy broke into a house in Visalia and fled when the homeowner returned. Police officers searched the area and detained Murphy. The officers searched Murphy’s vehicle and found medications and a starter for a BMW that had been taken during a burglary earlier that day. During questioning, Murphy changed his story several times before admitting he had been in the victim’s house and fled out the back door to avoid being caught.

On November 2, 2017, the Tulare County District Attorney filed a complaint charging Murphy with the two charges and other allegations to which he pled.

On February 20, 2018, Murphy entered his plea as noted above in exchange for the court’s indicated sentence of nine years in prison.

On April 6, 2018, the court struck the two prior prison term enhancements and, in accord with the indicated sentence, imposed an aggregate nine-year prison term, a doubled middle term of four years and a five-year serious felony enhancement.

¹ All further statutory references are to the Penal Code.

DISCUSSION

Murphy contends that because his appeal is not final he is entitled to the benefit of Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Senate Bill 1393), which became effective January 1, 2019, and now allows trial courts to strike serious felony enhancements. He further contends that remand is necessary to allow the court to exercise its discretion to consider whether to strike his serious felony enhancement. Respondent concedes with respect to both contentions and we agree.

Senate Bill 1393, signed into law on September 30, 2018, amends sections 667 and 1385 to provide the trial court with discretion to dismiss, in the furtherance of justice, five-year enhancements imposed pursuant to section 667, subdivision (a)(1)). (Stats. 2018, ch. 1013, §§ 1-2.) The new law took effect on January 1, 2019. Murphy and the People agree the law is applicable to appellants, like Murphy, whose appeals were not final on the law's effective date. (*In re Estrada* (1965) 63 Cal.2d 740.) Accordingly, we remand this matter for the trial court to exercise its discretion to consider whether to strike Murphy's serious felony enhancement.

DISPOSITION

The matter is remanded with directions that the trial court exercise its discretion to impose or strike the five-year prior serious felony enhancement imposed pursuant to Penal Code section 667, subdivision (a)(1). In all other respects, the judgment is affirmed.